

**SEP 10 2004**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

FLAVIA MABOLOC CAHOON,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 02-72891

Agency No. A70-638-201

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted March 5, 2004  
Pasadena, California

Before: NOONAN, KLEINFELD, and BERZON, Circuit Judges.

Cahoon is statutorily barred from adjustment of status. The immigration judge found that she “came to the United States as the fiancée of Hammes.” She sought adjustment based on a marriage to a different person, not Hammes.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Hammes filed the petition for her visa. Under 8 U.S.C. § 1255(d), the Attorney General may not adjust the status of a § 1101(a)(15)(K) non-immigrant except “as a result of the marriage of the nonimmigrant . . . to the citizen who filed the petition . . . .”

Cahoon’s argument that the BIA denied her due process of law by affirming the immigration judge’s decision without opinion is foreclosed by Falcon Carriche v. Ashcroft, 350 F.3d 845, 851-52 (9th Cir. 2003). We need not address whether her case was properly streamlined by the BIA because our review of the merits of her case makes such review superfluous.

Pursuant to Desta v. Ashcroft, Cahoon’s motion for stay of removal included a timely request for stay of voluntary departure.<sup>1</sup> Because the motion for stay of removal was continued based on the government’s filing of a notice of non-opposition, the voluntary departure period was also stayed, nunc pro tunc, to the filing of the motion for stay of removal, and this stay will expire upon issuance of the mandate.

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<sup>1</sup>Desta v. Ashcroft, 365 F.3d 741, 745 (9th Cir. 2004).

Petition DENIED.